

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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SCOTT SHEWBRIDGE,  
Plaintiff,

NO. CIV. S-05-0740 FCD EFB

v.

MEMORANDUM AND ORDER

EL DORADO IRRIGATION DISTRICT,  
a municipal corporation; ANE  
DEISTER, DAVID POWELL, THOMAS  
CUMPSTON, GEORGE WHEELDON,  
GEORGE OSBORNE,

Defendants.

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Plaintiff Scott Shewbridge ("plaintiff") moves this court for an order modifying the Pretrial Scheduling Order to permit extension of the discovery cutoff date, so that plaintiff may depose defendant George Wheeldon and two non-party witnesses, Michelle Ludwig and Dee Brookshire. Plaintiff maintains that an extension of time is necessary because Mr. Wheeldon fell ill before his originally scheduled deposition, and after numerous attempts, the process server was unable to locate and serve the

1 two non-party witnesses in advance of their noticed depositions.  
2 Defendants oppose plaintiff's motion only as it concerns the two  
3 non-party witnesses.<sup>1</sup> With respect to defendant Wheeldon,  
4 defense counsel stipulates to his deposition provided the court  
5 extends the discovery cutoff date.

6 A pretrial order "shall not be modified except upon a  
7 showing of good cause." Fed. R. Civ. P. 16(b). The district  
8 court may modify the pretrial schedule "if it cannot reasonably  
9 be met despite the diligence of the party seeking the extension."  
10 Johnson v. Mammoth Recreations, Inc., 975 F.2d 604, 609 (9th Cir.  
11 1992) (quoting Fed. R. Civ. P. 16, advisory committee's notes  
12 (1983 amendment)). The "good cause" standard set forth in Rule  
13 16 primarily focuses upon the diligence of the party requesting  
14 the amendment. "Although the existence or degree of prejudice to  
15 the party opposing the modification might supply additional  
16 reasons to deny a motion, the focus of the inquiry is upon the  
17 moving party's reasons for seeking modification." Id.

18 Plaintiff seeks an extension of discovery because, despite  
19 efforts to do so, he was unable to serve and depose Ms. Ludwig  
20 and Ms. Brookshire before the close of discovery. Ms. Ludwig and  
21 Ms. Brookshire were colleagues of plaintiff at the time he worked  
22 for defendant El Dorado Irrigation District. Each claims to have  
23 witnessed at least one incident of plaintiff engaging in improper  
24 workplace behavior, which they documented in writing for their  
25 superiors. Defendants have offered the written statements in  
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27 <sup>1</sup> Because oral argument will not be of material assistance,  
28 the court orders this matter submitted on the briefs. See E.D.  
Cal. Local Rule 78-230(h).

1 support of their pending motion for summary judgment, currently  
2 set for hearing on September 29, 2006.

3 Plaintiff originally noticed Ms. Ludwig and Ms. Brookshire's  
4 depositions for August 1, 2006, and first tried to serve them on  
5 July 15, 2006. Plaintiff attempted service on them thereafter  
6 approximately seven times each, over a two-week period, but the  
7 process server was unable to make contact with them at their home  
8 addresses. The attempts at service were finally cancelled on  
9 August 2, 2006. Discovery closed in this case on August 7, 2006,  
10 per the Pretrial Scheduling Order, dated August 18, 2005.

11 Defendant argues that plaintiff cannot demonstrate good  
12 cause for an extension of time because plaintiff waited until the  
13 very end of a year-long discovery period to attempt to depose  
14 these witnesses. While perhaps risky, there is nothing improper  
15 about conducting discovery near the end of the discovery period.  
16 Here, plaintiff noticed the depositions within the allowed  
17 discovery period and made a good faith effort to serve the  
18 witnesses a reasonable amount of time in advance, and thus,  
19 plaintiff has demonstrated good cause for a limited extension of  
20 discovery.

21 Furthermore, the Federal Rules of Civil Procedure permit  
22 discovery regarding "any matter, not privileged, which is  
23 relevant to the subject matter" of the litigation. See Fed. R.  
24 Civ. P. 26(b)(1). In their motion for summary judgment,  
25 defendants rely on the signed statements of Ms. Ludwig and Ms.  
26 Brookshire. As such, their depositions certainly might yield  
27 information relevant to this case, and plaintiff should be  
28 entitled to an extension of time to attempt to obtain that

1 information.

2 Because plaintiff may wish to use information obtained in  
3 the subject depositions in opposition to defendants' motion for  
4 summary judgment, the extension of discovery will necessitate a  
5 resetting of the motion for summary judgment and other dates, as  
6 set forth below. Additionally, while defendants have already  
7 submitted their moving papers, the court will allow defendants  
8 time to file a supplemental memorandum of points and authorities  
9 in support of their motion in light of the additional discovery,  
10 should they choose to do so.

11 In sum, with respect to the requested depositions, it is the  
12 court's understanding that defendants' counsel has stipulated to  
13 produce defendant Wheeldon for deposition once he is well;  
14 pursuant to this order, defense counsel shall produce him within  
15 the new discovery deadline, as set forth below. Having found  
16 good cause, discovery is extended for the limited purpose of  
17 taking the depositions of Michelle Ludwig, Dee Brookshire and  
18 defendant Wheeldon.

19 **CONCLUSION**

20 1. Plaintiff's motion to reopen discovery for a limited  
21 purpose is GRANTED and the Pretrial Scheduling Order of August  
22 18, 2005 is modified as follows:

- 23 a. The discovery cutoff is extended to October 27,  
24 2006 for the limited purpose of allowing the  
25 depositions of Michelle Ludwig, Dee Brookshire and  
26 defendant Wheeldon;  
27 b. The last day to hear dispositive motions is  
28 continued to December 1, 2006;

1 c. Defendants' motion for summary judgment is  
2 continued to December 1, 2006, at 10:00 a.m.  
3 Defendants may file and serve a supplemental  
4 memorandum of points and authorities addressing  
5 the deposition testimony on or before November 3,  
6 2006. Plaintiff's opposition papers shall be  
7 filed and served on or before November 17, 2006.  
8 Defendants' reply papers shall be filed and served  
9 on or before November 27, 2006.

10 d. The deadline for filing a Joint Final Pretrial  
11 Statement is RESET to February 23, 2007;

12 d. The Final Pretrial Conference is RESET to March 9,  
13 2007 at 2:30 p.m.;

14 e. The Trial is RESET to May 22, 2007 at 9:00 a.m.<sup>2</sup>

15 2. All other dates set forth in the Pretrial Scheduling  
16 Order shall remain unchanged.

17 IT IS SO ORDERED.

18 DATED: September 12, 2006

19 /s/ Frank C. Damrell Jr.  
20 UNITED STATES DISTRICT JUDGE  
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28 <sup>2</sup> Due to the court's unavailability and trial schedule, the  
trial date in this case would have been reset in any event.